United States Environmental Protection Agency: Region 5

Proposed Reopening of Air Pollution Control Title V Permit to Operate
Issued to Veolia ES Technical Solutions, L.L.C., 7 Mobile Avenue, Sauget, Illinois
Permit No. V-IL-1716300103-08-01; Expires October 12, 2013

Docket ID No. U.S. USEPA-R05-OAAR-2012-0649

Affidavit of Doug Harris:
Comments in Support of Veolia ES Technical Solutions, L.L.C.

I, Doug Harris, being over the age of 18 and of sound mind, state and depose under oath as follows:

1. I am currently the General Manager at Veolia ES Technical Solutions, L.L.C. in Sauget, Illinois ("Veolia"). I have over 25 years of experience in the commercial hazardous waste incineration industry. I have a degree in Mechanical Engineering from the University of Illinois and a Masters in Business Administration from Saint Louis University. I am personally aware and familiar with the information set forth herein.

2. I have reviewed the following documents: Region 5, USEPA, Statement of Basis, Title V Permit to Operate, Permit No. V-IL-1716300103-08-01 (Jan. 2013) (hereinafter "Statement of Basis") and Draft Title V Permit No. V-IL-1716300103-08-01 (Jan. 2013) (hereinafter "Draft Permit").

3. Veolia submitted its original Title V permit application to IEPA on September 7, 1995. IEPA deemed Veolia's application administratively complete the following month, in October of 1995. Nearly eight years later, on June 6, 2003, IEPA finally issued a draft Title V Permit for public comment. The public comment period on this draft permit ended on September 12, 2003, and IEPA sent a revised draft permit to USEPA on November 6, 2003, for review. USEPA did not issue any comments on the revised draft Title V permit issued by IEPA.

4. In December of 2003, in compliance with the interim HWC MACT Rule, Veolia submitted a Comprehensive Performance Test and Continuous Monitoring System Performance Evaluation Test Plan (2003 CPT Plan) to the IEPA and USEPA. The 2003 CPT Plan outlined the procedures for conducting Comprehensive Performance Tests ("CPTs") on Veolia's three incineration units—units 2, 3, and 4. In addition to setting forth the CPT parameters for compliance with the HWC MACT, the 2003 CPT Plan set forth a request by Veolia's to use data-in-lieu and extrapolation to establish its Operating Parameter Limits ("OPLs") as expressly allowed under 40 C.F.R. § 63.1207(c)(2), 40 CFR § 63.1209(n)(2)(vii), and 40 CFR § 63.1209(l)(1)(v).[1] Specifically, the 2003 CPT

[1] OPLs are limitations on incinerator operating conditions, which include limitations on the amount of certain types of waste that can be fed into the incinerator. They are also referred to as "feedrates." For example, Veolia's OPL—feedrate—for chlorine is 247 lbs/hr for incineration unit 3.

Plan stated that the testing data developed for one of the fixed hearth units would be used to develop OPLs for both incinerators 2 and 3—since units 2 and 3 are identical incinerators—in lieu of testing both 2 and 3 individually. The 2003 CPT Plan also called for the use of extrapolation to establish the feed rates for wastes containing low volatile metals (LVMs), semi-volatile metals (SVMs), and mercury. Veolia stated its intention to use data-in-lieu and extrapolation with the IEPA and USEPA during meetings held with both agencies on January 22, 2003 and April 24, 2003 and neither objected.

5. IEPA never commented on the 2003 CPT Plan until April 5, 2006. On April 5, 2006, Veolia met with IEPA regarding Veolia's pending Title V permit. At that meeting, IEPA objected to any attempt to interchange data between Units 2 and 3. IEPA also stated that Veolia had submitted sufficient information to document MACT compliance for incinerator units 2 and 4. However, IEPA for the *first* time stated that it disagreed with Veolia's use of data-in-lieu to establish limits regarding incineration unit 3. In addition, IEPA insisted that Veolia conduct performance testing on unit 3 expeditiously. Thus, in May and June of 2006, at significant additional expense due to the short time period allowed for testing by IEPA, Veolia performed MACT compliance testing on unit 3 individually. This testing demonstrated that the unit met all applicable MACT standards, including those for LVMs, SVMs, and Mercury.

6. In 2004, Veolia contracted with Franklin Engineering Group (Franklin Engineering) to perform an independent Risk Assessment regarding metals emissions. Franklin Engineering utilized USEPA's Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities[2] to determine that Veolia's low level of metals emissions did not pose a risk to the water bodies in Frank Holten State Park. In November of 2005, Veolia submitted the results of this risk assessment to the USEPA. USEPA indicated to Veolia that it would review and comment on the results of the risk assessment conducted by Franklin Engineering within four to six weeks; however, USEPA never responded to Veolia's submission.

7. Veolia received a FOV from USEPA on September 27, 2006. On October 23, 2006, Veolia met with USEPA regarding the September 27th FOV. (The FOV did not require Veolia to submit a response or take other specific corrective action; rather it provided Veolia with an opportunity to meet with USEPA to discuss the allegations.) At the October 2006 meeting, Veolia provided a significant amount of information specifically disputing the allegations contained in the FOV. At the conclusion of the meeting, USEPA personnel committed to providing a response to the information provided by Veolia. However, USEPA has never provided such a response to Veolia.

8. USEPA notified Veolia on September 29, 2006 that it was the Agency now in charge of issuing Veolia's long-delayed Title V Permit. After taking over the permitting action, USEPA required Veolia to submit a new application for a Title V Permit, including

[2] Franklin Engineering utilized the 1998 Peer Review Draft version of the HHRAP (EPA530-D-98-001) during the initial stages of the risk assessment and then finalized its evaluation using the Final HHRAP (EPA520-R-05-006), which USEPA published in September of 2005.

information related to Veolia's compliance with the MACT standards. USEPA set September 29, 2007 as the deadline for that application to be submitted. However, in April of 2007, USEPA notified Veolia that the application was, in fact, required to be submitted on May 2, 2007, effectively shortening the remaining application period to one month. Nevertheless, Veolia timely submitted a new Title V Permit application on May 2, 2007. The application was deemed administratively complete on June 13, 2007.[3]

9. On February 22, 2008, USEPA issued Section 114 Information Requests to Veolia requiring in part that Veolia complete CPTs on all three incinerators by July 15, 2008. In a meeting with USEPA on March 13, 2008, Veolia presented its concerns regarding the extremely short time period that it was given to complete the CPTs required by the February 2008 Information Requests. At the meeting, USEPA acknowledged that the schedule included in the February 2008 Information Requests was unrealistic in light of the time needed to plan, prepare, and perform the CPTs. Veolia agreed to propose an alternative, more practical, schedule and submit it to the USEPA. Veolia's proposed schedule stated that the CPTs would be completed between August of 2008 and April of 2009. However, USEPA rejected this proposal.

10. In an April 25, 2008 telephone conference call, Veolia was informed by USEPA that, in order to address the need to demonstrate compliance with the HWC MACT, Veolia had to choose either to complete the CPTs for metals testing discussed in the February 2008 Information Requests as directed by the USEPA, pursuant to the Agency's very tight time frame, or alternatively to choose one of four options addressing MACT metals for inclusion in the Title V Permit. The four options presented to Veolia were: 1) cease incinerating any wastes containing any MACT metals; 2) install Continuous Emission Monitoring Systems (CEMS) for mercury; 3) accept OPLs developed by USEPA (USEPA Land to assist USEPA Air); or 4) settle previously discussed compliance concerns with issue resolution incorporated into the Title V Permit. After negotiations, Veolia—although knowing that conducting performance testing within this expedited time period would be challenging and result in increased costs and, more importantly, increased risk of calculation error as a result of reduced QA/QC review time—chose, with the agreement of USEPA, to conduct the metals performance testing instead of one of the four alternatives presented by the Agency. Veolia agreed to expedite the delivery of the metals performance test plans and USEPA agreed to review the test plans in two weeks. In phone conferences held on May 12 and 14, 2008, the parties discussed details of the testing and USEPA agreed to memorialize the agreement through the June 2008 Information Requests such that Veolia would only be required to perform emission testing for mercury, LVMs, and SVMs ("MACT metals"). A revised Section 114 Information Request was therefore issued on June 5, 2008. The June 5, 2008 request included a provision that Veolia would submit an application for significant modification to its Title V permit (to include the OPLs for LVMs, SVMs, and mercury developed by the Metals Performance Testing in the Title V Permit).

[3] Since Veolia's application was deemed complete by USEPA in June of 2007, Veolia has paid Title V permit fees to both IEPA and USEPA annually.

11. Prior to including an extrapolation method in its test plan for MACT metals testing in 2008, Veolia discussed extrapolation methods with Mr. Charlie Hall at USEPA Region 5. As a result of these discussions, Mr. Hall provided Veolia with a protocol that had been previously approved by USEPA for use by Lubrizol Corporation (a corporation also regulated by Region 5) ("Lubrizol Extrapolation Methodology"). Veolia incorporated the approved Lubrizol Extrapolation Methodology into the metals test plan that Veolia submitted to USEPA in accordance with the June 2008 information requests.

12. On or about July 28, 2009, USEPA initiated a call with Veolia staff. During this call, USEPA expressed satisfaction with the preparation of the spiked sample for mercury but continued to express concern with the moisture content of the solid samples. This was part of an ongoing discussion with USEPA in which USEPA alleged on a number of occasions that analysis the Agency had conducted on the 2008 split samples—specifically with regard to moisture content—was inconsistent with Veolia's analysis even after Veolia had adjusted the OPLs in November of 2008. During these discussions, Veolia repeatedly offered to use USEPA's moisture content or, in the alternative, use the most conservative moisture content to develop new OPLs. USEPA continually rebuffed these attempts to settle the dispute by refusing to provide Veolia with the split sampling results or the moisture content USEPA allegedly found via analysis of its own split samples.

13. On November 3, 2009, during a conference call with Veolia, USEPA requested that Veolia resubmit its application for significant modification of Veolia's Title V permit with even more restrictive OPLs for LVMs, SVMs, and mercury. In the discussions, USEPA and Veolia agreed that Veolia could use the Lubrizol Extrapolation Methodology as it had previously used (and that was previously provided by USEPA in 2008), but this time Veolia would limit the extrapolation to a maximum of a low multiple of the performance test feedrates or 75% of the MACT Emission Standard, whichever was less.

14. On February 27, 2012, USEPA contacted Veolia to set up a conference call concerning Veolia's application for significant modification of Veolia's Title V permit. Despite the requirements of 40 C.F.R. § 71.7(a)(2), which requires the Agency to respond within 18 months, twenty-four months had passed since Veolia submitted its February 2010 application for significant modification. A conference call was held between Veolia and USEPA on March 8, 2012. During the call, USEPA informed Veolia that the Agency was going to deny Veolia's application for significant modification based on the extrapolation methodology that Veolia used—the Lubrizol Extrapolation Methodology that USEPA had agreed Veolia could use in 2008.

15. On February 9, 2009, Veolia received an Information Request under Section 114 of the Clean Air Act, dated January 29, 2009, which directed Veolia to install millions of dollars' worth of CEMS monitoring equipment within a 30-day timeframe. After being denied an extension of time to evaluate USEPA's directive, Veolia submitted its detailed response on March 4, 2009. Veolia's response raised numerous legal, procedural, and technical concerns regarding the provisions of the January 2009 Information Requests.

The vast majority of Veolia's concerns were substantive scientific and engineering questions regarding the reliability and accuracy of mercury CEMS. USEPA and Veolia met to discuss the January 2009 Information Requests on May 13, 2009. At the May 13, 2009 meeting, USEPA conceded that 30 days had been an insufficient period of time to install the CEMS contemplated by the January 2009 Information Requests. Moreover, the Agency acknowledged that the National Institute of Standards and Technology ("NIST") had yet to come up with a traceable calibration standard that could begin to verify the accuracy of data produced by the proposed mercury CEMS. USEPA also conceded that they referenced the wrong Performance Specification—Draft PS12—in their information requests and admitted that, to their knowledge, no mercury CEMS had yet been installed and successfully operated at a commercial hazardous waste combustion facility in the United States. Despite these errors, USEPA indicated that they were not going to withdraw the January 2009 Information Requests and maintained that the Agency intended to use the data collected via the CEMS for compliance with the HWC MACT and possible enforcement. However, the Agency did indicate that they wished to continue the dialogue with Veolia and ended the meeting by stating that Agency personnel would contact Veolia for further discussions—with the eventual goal being some sort of settlement regarding compliance. To date, USEPA has not provided a written response to Veolia's questions or concerns.

16. On or about May 29, 2009, Veolia received another Information Request from USEPA under Section 114 of the Clean Air Act ("May 2009 Information Requests"). The May 2009 Information Requests sought data on Veolia's 1-minute average mercury feedrates, 12-hour rolling average mercury feedrates, and extensive technical information related to the laboratory analysis performed on samples during the 2008 metals testing. Veolia submitted the required information via its response dated July 6, 2009, and further supplemented its response via correspondence dated July 28, 2009. USEPA did not respond to Veolia's submissions.

17. On March 10, 2010, Veolia received an Information Request under Section 114 of the Clean Air Act, that attempted to fix the deficiencies of the January 2009 Information Requests, in part, by placing the burden on Veolia to create technical standards for the mercury CEMS. Veolia responded to the March 2010 Information Requests on March 25, 2010. Additionally, on April 28, 2010, Veolia sent a team of decision makers to meet with USEPA at USEPA's Raleigh, North Carolina Research Triangle Park facility. Veolia stated its belief that Veolia incinerators presented the most challenging environment a mercury CEMS had ever attempted to operate in and the CEMS would likely fail. The Agency did not disagree and offered no evidence to the contrary. As a result of the discussions, the Agency offered to entertain alternative methods to obtain relevant emissions information. Subsequently, on May 25, 2010, Veolia offered to install additional technology in the form of activated carbon injection systems on Units 2 and 3, provided that all approvals were in place, to further reduce emissions, and to perform mercury emission testing in accordance with USEPA approved 2009 performance test plans. USEPA never responded to Veolia's offer.

18. USEPA did not bring up the March 2010 Information Requests—or mention CEMS at all—until Veolia received an FOV dated August 24, 2012. The August 2012 FOV states, without explanation, "[t]o date, Veolia has failed to provide any of the information required by the March 10, 2010 Information Request in violation of Section 114 of the CAA." As the information set forth above in this Affidavit demonstrates to the contrary, it was USEPA that never provided any response to Veolia's March 4, 2009 response to the January 2009 Information Requests, Veolia's March 25, 2010 response to the March 2010 Information Requests, or to Veolia's May 25, 2010 offer to install carbon injection systems as a way to resolve the issues presented in the March 2010 Information Requests.

19. On June 7, 2010, the Agency sent Veolia its sixth Information Request under Section 114 in twenty-eight month ("June 2010 Information Requests"). The June 2010 Information Requests sought data on Veolia's 1-minute average for all metal feedrates, 12-hour rolling average for all metal feedrates, and extensive technical information related to analysis performed on samples conducted on all materials fed into Incinerators 2, 3 and 4 from January 1, 2005 to the date of the June 2010 Information Requests. It also requested information on process upsets, malfunctions or shutdowns for various timeframes. Veolia submitted the required information. USEPA did not respond to Veolia's submissions.

20. On December 2, 2009, 12 years after Veolia submitted its application for renewal of its RCRA Part B Permit, IEPA issued a final RCRA Part B permit to Veolia. The final permit contained essentially the same requirements as the 2008 Draft RCRA permit; specifically, it included all of the stringent mercury analysis that Veolia had provided comments on and objected to in September of 2008. On January 5, 2010, Veolia appealed the 2009 Final RCRA permit in its entirety by filing a petition for review with the Illinois Pollution Control Board. Veolia's appeal is still pending before the Board.

21. On October 4, 2011, Veolia met with personnel from IEPA, the Illinois Attorney General's Office, and USEPA in Springfield, Illinois, to discuss IEPA's comments on the Sampling and Analysis Plan with respect to attempting to resolve the RCRA permit appeal. Although the meeting was set up to discuss IEPA's comments, USEPA personnel led the technical discussion of the meeting concerning the risk assessment and its role in supporting their actions under the HWC MACT Rule. At the conclusion of the meeting, USEPA also, for the first time, verbally shared with Veolia the Agency's calculated mercury removal efficiencies for the three incineration units. This information allowed Veolia to calculate the numerical OPLs (feedrates) for mercury that the Agency believed Veolia should be operating under. (Recall that Veolia had repeatedly requested that USEPA share their calculations and OPLs with Veolia during the Title V permitting process in 2008.)

22. In the reopening, the proposed Draft Permit sets forth in 2.1(D)(4)(d)(2)(v) the "[t]reatment of detection limits for metal feedrate calculations." The requirements set forth in this subsection require Veolia to sample and analyze many waste streams even though there is no documented metals contained in the waste. This issue was discussed at length in a meeting with IEPA and USEPA on February 9, 2011. At that time, USEPA

agreed that waste exempted from sampling would have the concentration defined as "0" instead of the MDL or EQL. Consistent with USEPA's agreement on February 9, 2011, Veolia should be allowed to assign a metals concentration of "0" for the following reasons. First, the facility submits a TRI report yearly setting forth the total metals received, incinerated, emitted, and disposed. When Veolia knows that a given waste contains no metals based on generator knowledge or document research (e.g. MSDSs), it is nonsensical to demand that Veolia inaccurately inflate the TRI report by using detection limits. Moreover, doing so could falsely alarm the public and puts the facility in a position of having to knowingly certify an inaccurate report. Second, applying detection limits for these types of wastes, limits the amount of real metals the facility can incinerate by artificially inflating the feedrate numbers. This result puts Veolia at an unfair competitive disadvantage while doing nothing to protect the public health or the environment. Veolia should not be required to report metals emissions that do not exist; this could place me, as the General Manager, in the untenable position of either having to unethically certify erroneous emissions reports or having the facility violate EPCRA's reporting requirements.

23. I am aware of the Findings of Violation ("FOVs") referenced within the Statement of Basis for the reopening. Veolia's counsel and I have informed USEPA on numerous occasions that Veolia believes that the FOVs served on Veolia are comprised of misstatements and claims that cannot be substantiated. In meetings with USEPA legal personnel, Veolia and its counsel have repeatedly requested that the Agency provide Veolia with evidence supporting the USEPA's claims that Veolia violated the emission requirements of the HWC MACT. USEPA has failed to provide any evidence or analysis evidencing violations of the HWC MACT emission standards by Veolia.

24. Veolia representatives met with USEPA on September 18, 2012, in Chicago to discuss both the August 24th FOV and a September 13th NOV, which contained a subset of the same allegations contained with the August 24th FOV. During the meeting, Veolia made two points very clear. First, Veolia could not properly respond to the violations alleged in the FOV and the NOV without receiving a copy of the NEIC Report, which, at the time of the meeting, Veolia had requested but had not received. Second, based on the information set forth in FOV and the NOV, Veolia conveyed that the NEIC Report appeared to contain errors. Sabrina Argentieri requested Veolia set forth in writing the allegations that Veolia believed to be erroneous to the extent Veolia could do so without having the benefit of having reviewed the NEIC Report. On September 26, 2012, Veolia provided Ms. Argentieri with the requested written analysis without having the benefit of the NEIC Report.

25. On November 29, 2012, USEPA provided Veolia with a "Fact Sheet" concerning the permit reopening. The "Fact Sheet" contained numerous inaccurate and derogatory remarks concerning Veolia, including that the Veolia facility was "controversial" and needed "tougher" feedrates. On November 30, 2013, I contacted USEPA and requested that the above statements be removed from the final Fact Sheet or corrected. However, even after USEPA agreed to remove such comments, it nevertheless included the draft

documents containing the derogatory statements as part of the administrative record available to the public in this reopening.

FURTHER AFFIANT SAYETH NOT.

Doug Harris

Doug Harris

SWORN AND SUBSCRIBED
Before me this 26 day
of March, 2013.

Cheryl Miller

Notary Public

OFFICIAL SEAL
CHERYL MILLER
Notary Public - State of Illinois
My Commission Expires Mar 29, 2015

My Commission Expires

3/29/15